
(1996) 05 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 9079 of 1995

Uttam Sahoo

APPELLANT

Vs

Chairman, Orissa State Electricity Board of Another

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Citation : (1996) 2 OLR 99

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : R.K. Monanty and T.C. Mohanty, for the Appellant; S.K. Sarangi, for the Respondent

Judgement

A. Pasayat, J.—Batakrushna Sahoo alias Krushna Chandra Sahoo (hereinafter referred to as "the deceased") having lost his life by electrocution on 9-10-1995, this writ petition has been filed by his widow for a direction to the Orissa State Electricity Board (for short, "the Board") to pay compensation of Rs. 3,50,000/-.

2. Back ground facts as projected by the petitioner, filtering out unnecessary details are as follows :

Deceased came from a remote village to Cuttack City to earn his livelihood and was plying rickshaw in the city. At about 10 a. m. on the fateul day. while he was sitting on his rickshaw near Nuapada Market Complex along with two other rickshaw pullers waiting for passengers, a live 33 KV. electric wire fell down on them being disconnected from the main line. It fell down on the deceased .and two others who breathed their last due to electrocution. The matter was immediately reported at Madhupatna Police Station and P. S. Case No. 306 dated 9-10-1995 was registered, and corresponding G. R. Case No. 1736 of 1995 was registered before the concerned Magistrate.

3. Petitioner's case is that because of negligence of opposite parties, the high voltage electric line got snapped and the accident occurred resulting in death of deceased, an innocent person and the sole bread earner of his family. In the

counter-affidavit filed by the Board and its functionaries it has been stated that because of high speed wind and stormy weather, the line slipped from the joint and there was no negligence involved. The conductor which snapped belonged to three phased four wire distribution line which was extended to the Labour Colony from 500 KVA 11/ 4 KV Substation No.0 13. The Poles 27/E and 28/E of i. E. O/13 route are put across the street so that the line crosses the street of Nuapada square. It is stated that there was unauthorised drawal of power from the electric lines, and those unauthorised connections have resulted in weakening the lines. Even though such theft of power was reported to the police authorities, no effective action was taken. Though the accident is tragic there was no negligence involved and all possible care and caution had been taken to prevent snapping of lines. Essentially it is stated that the act was one which can be described as an act of God and there is no scope for directing payment of compensation in this writ application.

4. Learned counsel for the petitioner submitted that after having accepted snapping of electric lines, it is not fair on the part of the Board to plead that the accident was an act of God, and there was no human control over it.

It is stated by Mr. B. R. Sarangi, learned Counsel for the Board that many times suggestions have been given to prevent recurrence of the type of accidents which result from snapping of wires, and subsequently resulting in electrocution. As possible care and caution has been taken and preventive measures adopted, no negligence can be attributed to warrant grant of compensation.

5. Preventive measures suggested to be taken may provide safety in future. Those cannot be pressed into service to deny liability of the Board. The term "compensation" as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss of injury sustained, the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another ; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Penuniary damages are to be valued on the basis of " full compensation". That concept was first stated by Lord Blackburn in *Livingstone v. Rawyards Coal Co.* (1880) AC 25.

6. The "Rule of Law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. "Compensation" means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay : it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined and given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another

in order that thereby the person demnified may receive equal value for his loss ; or be made whole in respect" of his injurry ; something given or obtained as equivalent; rendering of equivalent in value or amount ; an equivalent given for property taken or for an injury done to another; a recompense in value ; a recompense given for a thing received; recompense for whole injury suffered ; remuneration or satisfaction for injury or damage of every description. The expression "compensation" is not ordinarily used as an equivalent to damages, although compensation may often have to be measured by the same rule as damages in an action for a breach. The term "compensation" as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered ; damages, on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. "Compensation" is a return for a loss of damages sustained. Justice requires that it should be equal in value, although not alike in kind. "Amends" is a return for something that is faulty in ourselves or towards others, "Satisfaction" is that which satisfies the individual requiring it, is given for personal injuries, and may be made either by a slight return or otherwise, according to disposition of the person to be satisfied. "Recompense" is a voluntary return for a voluntary service ; it is m3de from a generous feeling and derives its value not so much from the magnitude of service or return, as from intention of the parties towards each other; and it is received not so much as a matter of right as of courtesy. "Remuneration" is not voluntary as recompense, but it is equally indefinite, being estimated rather according to condition of the person and dignity of service, than its positive worth. "Requital" is the return of a kindness, the making it is an act of gratitude. "Reward" may be a bad return when it is inadequate to the merits of the person.

7. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in *West v. Shepard* : 1964 AC 325. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. It is a return for a loss or damage sustained, justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the daceased which includes pecuniary loss expenses etc, and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damages cannot be arrived at by precise mathematical calculation ; but amount recoverable depends on broad facts and circumstances

of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is agreed. Upjohn L. J. in *Charter House Credit v. Jolly*: (1963) 2 C B 683 remarked, the assessment of damages has never been an exact science; it is essentially practical."

8. The question of negligence of a company engaged in transmission of electric energy was considered in *Quebec Railway, Light, Heat Power Company Ltd. v. Vandry* : 1920 AC 662. The concerned railway company in exercise of statutory powers had erected two overhead cables for the distribution of electric current. In that case, on account of a violent wind, a branch from a tree growing about 28 feet away from the cables was broken, which resulted in the breaking down of the cables and the high tension current found its way along with the low tension cable into the respondents' premises and caused a fire. An action for damages was brought by the respondents against the concerned power company. The Court of Appeal held that the company was liable to the damage without proof that it had been negligent, since it had failed to establish that it could not have prevented the escape of the electric current, further that its statutory powers afforded no defence, since the escape of the current was not necessarily incident to the exercise of those powers.

9. The expression "act of God" signifies the operation of natural forces free from human intervention, such as lightning, it may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidal-buries and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, the railway administration knows that in a particular area during a particular season there have been heavy down-pours of rain and consequent extraordinary floods causing damage to their track, they cannot take the plea, that they were due to act of God because it is within their competence to take such steps as would prevent damage. Lord Westbury defined act of God (*damnum fatale* in Scotch Law) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. This appears to be the nearest approach to the true meaning of act of God. Lord Westbury's definition was approved by Lords Denning and Shaw in the House of Lords in *Greenock Corporation v. Caledonian Ry.* Similarly, Lord Blaneburgh spoke of it as "an irresistible and unsearchable providence nullifying all human effort."

10. We are, therefore, of the considered opinion that the Board is liable to pay compensation.

11. The next question is what would be the proper compensation. Beacon light is available in this regard from the decision of the apex Court in *General Manager,*

Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . Age of the deceased as evident from the documents available is around 26 years. Taking that into consideration, and the avocation of life which was being pursued by deceased, payment of compensation of Rs. 8 ,000/- in total would meet the end of justice. It would be for the benefit of family members of the deceased. Out of the said amount, Rs. 60,000/- shall be kept in a fixed deposit for period of five years in the name of petitioner and the balance amount shall be paid to her on proper identification by any of the learned counsel appearing for her in this Court. No withdrawal shall be permitted against the deposit, before expiry of the period. However, it shall be open to the petitioner to move this Court to seek permission for withdrawal in case of pressing urgency. The amount awarded as compensation shall be deposited in this Court within four months from today by the opp. parties.

The application is allowed to the extent indicated. No costs.

A. Deb, J.

I agree.